



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant: **BERNARD K. SIMCOVITCH** :  
Serial No.: **10/810,544** :  
Filing Date: **March 29, 2004** :  
Title: **SAFE-T CUP LID** :  
Group Art Unit: **3727** :  
Examiner: **Ms. Robin A. Hylton** :

DECLARATION IN SUPPORT OF PETITION FOR REVIVAL OF  
APPLICATION  
UNINTENTIONALLY ABANDONED

Hon. Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

CHARLES I. BRODSKY, being hereby warned that wilfully false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of United States Code, and that wilful false statements may jeopardize the validity of this document declares that:

1. I am the attorney of record for the above Applicant since the filing of this Application on March 29, 2004.
2. On May 3, 2006, Examiner Robin Hylton issued a Final Rejection of Claims 4-12 and 15-17, the only claims pending in the Application. The Rejection was under 35 U.S.C. 112, Second Paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regarded as the invention.

The Specification was also objected to because the brief description of FIGURE 4 did not appear to correspond with what was actually shown.

Adjustment date: 11/21/2008 SDIRETA1 06/18/2007 MGEBREMI 00000018 10810544

02 FC:2254 01 FC:2453 750.00 OP  
-570.00 OP 02 FC:2254 570.00 OP

Refund Ref:  
11/21/2008 SDIRETA1 0000165232 *Q.S.*

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**REQUEST FOR RETURN OF EXTENSION FEE**

Office of Finance, Refund Section  
Hon. Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Enclosed is a Decision mailed April 29, 2008 from the Office of Petitions. As noted on Page 2, a refund of the \$570.00 extension fee is refundable pursuant to this Request.

Please forward a check in such amount to me at the address noted on Page 1 of the Petition Decision.

Respectfully submitted,

**BERNARD K. SIMCOVITCH**

*clb*  
CHARLES I. BRODSKY  
Attorney  
Registration No. 22,058

Dated: November 14, 2008

P.S. Please note that the check should be made payable to Charles I. Brodsky, Esq.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

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APR 29 2008

OFFICE OF PETITIONS

ON PETITION

In re Application of  
Bernard K. Simcovitch  
Application No. 10/810,544  
Filed: March 29, 2004  
Attorney Docket No. 5515

This is a decision on the petition under 37 CFR 1.137(b), filed June 15, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "**Renewed Petition under 37 CFR 1.137(b)**." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1) and (3).

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 20, 2004, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). No amendment *prima facie* placing the application in condition for allowance or Notice of Appeal (and appeal fee) was timely filed. Therefore, the above-identified application became abandoned.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$570 extension of time fee submitted with the petition on June 15, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary. Petitioner may request a refund of this fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

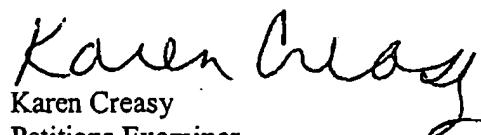
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

By hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

By facsimile: (571) 272-8300  
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at  
(571) 272-3208.

  
Karen Creasy  
Petitions Examiner  
Office of Petitions

Attachment: Advisory Action